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IN THE

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 567.

SPIELMAN MOTOR SALES COMPANY, *Appellant*,

vs.

WILLIAM C. DODGE, District Attorney, *Appellee*.

BRIEF OF APPELLEE.

VOLUME II.

APPENDIX.

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March 6, 1935.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPENDIX A.

Extracts from the National Industrial Recovery Act Public No. 67, 73d Congress.. 48 Stat. 195.

AN ACT to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

INDUSTRIAL RECOVERY

DECLARATION OF POLICY

Section 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of

the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

ADMINISTRATIVE AGENCIES

Sec. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Codes of Fair Competition

Sec. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided Further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district at-

torneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from

the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

AGREEMENTS AND LICENSES

Sec. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in

such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

Sec. 5. While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

(a) Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

Limitations Upon Application of Title

Sec. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

Sec. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

* * * * * * * *

RULES AND REGULATIONS

SEC. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500 or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

* * * * * * * *

Separability Clause

Sec. 303. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Short Title

Sec. 304. This Act may be cited as the "National Industrial Recovery Act."

Approved June 16, 1933, 11:55 a. m.

APPENDIX B.

New York Statute.

LAWS of 1933, Chapter 781.

(Effective August 26, 1933.)

Purpose.

AN ACT to provide for codes of fair competition for trades, industries and subdivisions thereof, agreements, licenses, rules and regulations pursuant to the provisions of the National Industrial Recovery Act, enacted by the congress of the United States effective June sixteenth, nineteen hundred thirty-three, as affecting intrastate commerce within the state.

Became a law August 26, 1933, with the approval of the Governor. Passed, on message of necessity three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:—

Section 1. Legislative finding; statement of policy.—A national emergency productive of widespread unemployment and disorganization of industry, which likewise prevails in the State of New York, which burdens intrastate, interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people and of the People of the State of New York, is hereby declared to exist. The existence in this state of such present acute economic emergency, and the effects and certain causes thereof as declared in section one of title one of the National Industrial Recovery Act, enacted by the Congress of the United States, effective June sixteenth, nineteen hundred thirty-three, are hereby recognized; and it is hereby declared that said emergency, the causes and effects thereof, as so declared, relate as well to commerce in this state wholly intrastate in character as to interstate and foreign commerce and transactions affecting interstate and foreign commerce carried on in this state. It is hereby declared to be the policy of this state to co-operate in the furtherance of the objects and purposes declared in said

act of the congress, and each and every provision of this act shall be construed in accordance with the policy so declared, and to make uniform the standards of fair competition prevailing in intrastate commerce and industry with those of interstate commerce required by the provisions of the said National Industrial Recovery Act which are applicable in interstate commerce in the state of New York.

Section 2. Filing of Codes and Agreements.—1. The Secretary of State is hereby authorized to receive for filing and shall file in the office of the department of state a copy of each Code, agreement, license, rule or regulation in effect pursuant to such act of the congress, pertaining, effecting or in any way relating to the conduct of business in the state and duly certified as a true copy of such document or documents by the officials in charge of the administration of the provisions of title one of the said National Industrial Recovery Act or by their duly authorized agents. Upon such filing of a copy so certified of a Code of Fair competition for any trade, industry or subdivision thereof, as approved by the President of the United States, or of any agreement or license or of any rule or regulation provided for under title one of the said National Industrial Recovery Act, such code, agreement, license, rule or regulation shall be the standard of fair competition for such trade or industry or subdivision thereof in the state as to transactions intrastate in character, and any violation of any provision of such code, agreement, license, rule or regulation shall be a misdemeanor, and upon conviction thereof, the person convicted shall be fined not more than five hundred dollars for each offense, and for each day such violation continues a separate offense subject to the fine herein prescribed shall be deemed to have been committed.

2. The Secretary of State shall cause to be printed a sufficient number of copies of each such code, agreement, license, rule or regulation and the same shall be kept available for distribution upon request therefor.

3. If in any such code, agreement, license, rule or regulation, power is conferred upon any person, or group of persons to subpoena witnesses, compel the production of books, papers and records, the attendance of witnesses or to take their testimony, a like power shall be deemed to have vested in such person or group of persons with regard to matters and things of a wholly intrastate character.

Section 3. Jurisdiction of Court.—The Supreme Court of the State of New York is hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition, agreement, license, rule or regulation, filed pursuant to this act, and to prevent and restrain the commission within this state of any act tending to defeat or hamper the operation and effectiveness, within the state of such act of the congress *at the instance of any party whose interests are or may be adversely affected by such violations or acts.* Nothing in this section contained, however, shall in anywise affect the criminal liability for violations of such codes, agreements, licenses, rules or regulations. Provided, however, that nothing in this act shall be construed by any public official or court as declaring illegal the right of workers to organize; to adopt a constitution and by-laws and enforce the same and the right to control and direct the members of such organization in accordance with such constitution and by-laws; that no provision of this act shall be construed to compel workers or employees to continue at their work; or to declare an act illegal of an organization to collectively cease work; or its officers directing the cessation of work of its members.

Section 4. Products of Individual Labor.—Nothing in this act shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this act prevent anyone from marketing or trading the produce of his farm.

Section 5. Exemption from Anti-Trust Laws; Application of Labor Laws.—While this act is in effect and for sixty days thereafter, any Code, agreement, license, rule or regulation in effect under this act, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of article twenty-two of the general business law, or of any other provisions of law, to the extent that such provisions of law are inconsistent with the provisions of such code, agreement, license, rule or regulation. Nothing in this act contained, however, shall be construed in any way to alter, modify or affect the provisions of existing laws of this state in such manner as to permit any change in public utility rates except with the permission and approval of the public service commissioner or as to lower the standards therein provided with regard

to labor, hours of labor, wages for labor and employment of females and children.

Section 6. Effect of Issuance, Suspension or Revocation of Licenses.—1. The license required of and obtained by any person pursuant to paragraph (b) of section four of said act of the Congress shall be deemed to include business engaged in or carried on by him of a wholly intrastate character, and with respect thereto such person shall be subject to all the terms and conditions expressed therein and shall be entitled to all the privileges and immunities granted thereby.

2. The failure to obtain such a license or the suspension or revocation by the President of the United States of any such license shall preclude such person from engaging in or carrying on any business of a wholly intrastate character.

3. Any person who engages in or carries on any business in this state in violation of sub-division two of this section shall upon conviction thereof be fined not more than five hundred dollars and for each day such violation continues a separate offense, subject to the fine herein prescribed, shall be deemed to have been committed.

Section 7. Letting of Public Contracts.—Every department, board, bureau, agency, authority, commission, public body or officer of the state or of any political subdivision thereof or district therein charged with the duty of letting or awarding contracts for (a) the construction, alteration, or repair of public works or (b) the purchasing of materials or supplies, shall, notwithstanding any inconsistent provision of law, let or award such contracts only to such persons or corporations, otherwise qualified, who or which will agree in and by the terms of such contract to use or supply only articles, materials and supplies which have been been or will be mined, produced, manufactured or supplied, as the case may be, by a person or corporation who or which is a party or subject to a code of fair competition, agreement or license, approved, prescribed or issued under the said National Industrial Recovery Act for the trade, industry or subdivision thereof mining, producing, manufacturing or supplying such articles, materials and supplies.

Section 8. Duration.—This act, in so far as it affects agreements, codes, rules or regulations, shall become ineffective contemporaneously with the expiration of said

National Industrial Recovery Act, provided for by section two (c) of said Act, and in so far as it affects licenses, contemporaneously with the expiration of the said National Industrial Recovery Act, as provided for in section four (b) of said Act.

Section 9. Effect of Partial Invalidity.—If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of the provisions thereof to other persons or circumstances, shall not be affected thereby.

APPENDIX C.

Executive Orders and NRA Bulletins.

EXECUTIVE ORDER NO. 6173.

ADMINISTRATION FOR INDUSTRIAL RECOVERY.

Pursuant to the authority of "AN ACT TO encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, and in order to effectuate the policy set forth in Title I—Industrial Recovery—of said act:

1. I hereby appoint Hugh Johnson to be the Administrator for Industrial Recovery under said Title I of said Act.

2. I hereby appoint a Special Industrial Recovery Board to be composed of the following members: The Secretary of Commerce, Chairman: the Attorney General: the Secretary of the Interior: the Secretary of Agriculture: the Secretary of Labor: the Director of the Budget; the Administrator for Industrial Recovery; the Chairman of the Federal Trade Commission.

The Administrator during the ensuing 30 days shall have authority, subject to the general approval of the Special Industrial Recovery Board, to appoint the necessary personnel on a temporary basis to conduct hearings and to do such other and necessary work as authorized under Title I of said Act.

FRANKLIN D. ROOSEVELT.

The White House,
June 16, 1933.

EXECUTIVE ORDER NO. 6205-A.

Pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and in supplement to my Executive Order of June 16, 1933, appointing Hugh S. Johnson to be the Administrator for Industrial Recovery under Title I of said Act, and appointing a Special Industrial Recovery Board, I hereby authorize the Administrator, subject to the general approval of the Special Industrial Recovery Board, to appoint the necessary personnel on a permanent basis, to fix their compensation, and to conduct such hearings and to exercise

such other functions as are vested in me by Title I of said Act, except the approval of codes, or making of agreements, or issuance of licenses, or exercise of powers conferred in Section 3 (e), Section 6 (c), Section 8 (b), Section 9, and Section 10.

FRANKLIN D. ROOSEVELT.

The White House,
July 15, 1933.

EXECUTIVE ORDER NO. 6205-B.

Pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933.

I hereby prescribe the following regulation, modifying any previous order inconsistent therewith:

Any code of fair competition approved by me shall be deemed in full force and effect on the effective date as stated in the code: but after the approval of a code and as an incident to the immediate enforcement thereof, hearings may be given by the Administrator or his designated representative to persons (hereby defined to include natural persons, partnerships, associations or corporations) who have not in person or by a representative participated in establishing or consenting to a code, but who are directly affected thereby, and who claim that application of the code in particular instances are unjust to them and who apply for an exception to, or exemption from, or modification of the Code. Such persons so applying within ten days after the effective date of the code, shall be given an opportunity for a hearing and determination of the issues raised prior to incurring any liability to enforcement of the code, and the Administrator shall, if justice requires, stay the application of the code to all similarly affected pending a determination by me of the issues raised.

Approval Recommended:
HUGH S. JOHNSON.

FRANKLIN D. ROOSEVELT.

The White House
July 15, 1933.

Bulletin No. 1—June 16, 1933

The law I have just signed was passed *to put people back to work*—to let them buy more of the products of farms and factories and start our business at a living rate again. This task is in two stages—first, to get many hundreds of thousands of the unemployed back on the pay roll by snowfall and second, to plan for a better future for the longer pull. While we shall not neglect the second, the first stage is an emergency job. It has the right of way.

The second part of the act gives employment by a vast program of public works. Our studies show that we should be able to hire many men at once and to step up to about a million new jobs by October 1, and a much greater number later. We must put at the head of our list those works which are fully ready to start now. Our first purpose is to create employment as fast as we can but we should not pour money into unproved projects.

We have worked out our plans for action. Some of it will start tomorrow. I am making available $400,000,000 for State roads under regulations which I have just signed and I am told that the States will get this work under way at once. I have also just released over $200,000,000 for the Navy to start building ships under the London treaty.

In my inaugural I laid down the simple proposition that nobody is going to starve in this country. It seems to me to be equally plain that no business which depends for existence on paying less than living wages to its workers has any right to continue in this country. By "business" I mean the whole of commerce as well as the whole of industry; by workers I mean all workers—the white-collar class as well as the men in overalls; and by *living* wages I mean more than a bare subsistence level—I mean the wages of *decent* living.

Throughout industry, the change from starvation wages and starvation employment to living wages and sustained employment can, in large part, be made by an industrial covenant to which all employers shall subscribe. It is greatly to their interest to do this because decent living, widely spread among our 125,000,000 people eventually means the opening up to industry of the richest market which the world has known. It is the only way to utilize

the so-called excess capacity of our industrial plants. This is the principle that makes this one of the most important laws that ever came from Congress because, before the passage of this act, no such industrial covenant was possible.

On this idea, the first part of the act proposes to our industry a great spontaneous cooperation to put millions of men back in their regular jobs this summer. The idea is simply for employers to hire more men to do the existing work by reducing the work-hours of each man's week and at the same time paying a living wage for the shorter week.

No employer and no group of less than all employers in a single trade could do this alone and continue to live in business competition. But if *all* employers in each trade now band themselves faithfully in these modern guilds—without exception—and agree to act together and at once, none will be hurt and millions of workers, so long deprived of the right to earn their bread in the sweat of their labor, can raise their heads again. The challenge of this law is whether we can sink selfish interest and present a solid front against a common peril.

It is a challenge to industry which has long insisted that, given the right to act in unison, it could do much for the general good which has hitherto been unlawful. From today it has that right.

Many good men voted this new charter with misgivings. I do not share these doubts. I had part in the great cooperation of 1917 and 1918 and it is my faith that we can count on our industry once more to join in our general purpose to lift this new threat and to do it without taking any advantage of the public trust which has this day been reposed without stint in the good faith and high purpose of American business.

But industry is challenged in another way. It is not only the slackers within trade groups who may stand in the path of our common purpose. In a sense these groups compete with each other, and no single industry, and no separate cluster of industries, can do this job alone, for exactly the same reason that no single employer can do it alone. In other words, we can imagine such a thing as a *slacker industry.*

This law is also a challenge to labor. Workers, too, are here given a new charter of rights long sought and hitherto denied. But they know that the first move expected by the Nation is a great cooperation of all employers, by one single mass action, to improve the case of workers on a scale never attempted in any nation. Industries can do this only if they have the support of the whole public and especially of their own workers. This is not a law to foment discord and it will not be executed as such. This is a time for mutual confidence and help and we can safely rely on the sense of fair play among all Americans to assure every industry which now moves forward promptly in this united drive against depression that its workers will be with it to a man.

It is, further, a challenge to administration. We are relaxing some of the safeguards of the antitrust laws. The public must be protected against the abuses that led to their enactment, and to this end we are putting in place of old principles of unchecked competition some new Government controls. They must above all be impartial and just. Their purpose is to free business—not to shackle it—and no man who stands on the constructive forward-looking side of his industry has anything to fear from them. To such men the opportunities for individual initiative will open more amply than ever. Let me make it clear, however, that the antitrust laws still stand firmly against monopolies that restrain trade and price fixing which allows inordinate profits or unfairly high prices.

If we ask our trade groups to do that which exposes their business, as never before, to undermining by members who are unwilling to do their parts, we must guard those who play the game for the general good against those who may seek selfish gains from the unselfishness of others. We must protect them from the racketeers who invade organizations of both employers and workers. We are spending billions of dollars and if that spending is really to serve our ends it must be done quicky. We must see that our haste does not permit favoritism and graft. All this is a heavy load for any Government and one that can be borne only if we have the patience, cooperation, and support of people everywhere.

Finally, this law is a challenge to our whole people. There is no power in America that can force against the public will such action as we require. But there is no group in America that can withstand the force of an aroused public opinion. This great cooperation can succeed only if those who bravely go forward to restore jobs have aggressive public support and those who lag are made to feel the full weight of public disapproval.

As to the machinery—the practical way of accomplishing what we are setting out to do, when a trade association has a code ready to submit and the association has qualified as truly representative, and after reasonable notice has been issued to all concerned, a public hearing will be held by the Administrator or a deputy. A Labor Advisory Board appointed by the Secretary of Labor will be responsible that every affected labor group, whether organized or unorganized, is fully and adequately represented in an advisory capacity and any interested labor group will be entitled to be heard through representatives of its own choosing. An Industrial Advisory Board appointed by the Secretary of Commerce will be responsible that every affected industrial group is fully and adequately represented in an advisory capacity and any interested industrial group will be entitled to be heard through representatives of its own choosing. A Consumers' Advisory Board will be responsible that the interests of the consuming public will be represented and every reasonable opportunity will be given to any group or class who may be affected directly or indirectly to present their views.

At the conclusion of these hearings and after the most careful scrutiny by a competent economic staff the Administrator will present the subject to me for my action under the law.

I am fully aware that wage increases will eventually raise costs, but I ask that managements give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. That is good economics and good business. The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity. If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. We cannot

hope for the full effect of this plan unless, in these first critical months, and, even at the expense of full initial profits, we defer price increases as long as possible. If we can thus start a strong sound upward spiral of business activity our industries will have little doubt of black-ink operations in the last quarter of this year. The pent-up demand of this people is very great and if we can release it on so broad a front, we need not fear a lagging recovery. There is greater danger of too much feverish speed.

In a few industries, there has been some forward buying at unduly depressed prices in recent weeks. Increased costs resulting from this Government-inspired movement may make it very hard for some manufacturers and jobbers, to fulfill some of their present contracts without loss. It will be a part of this wide industrial cooperation for those having the benefit of these forward bargains (contracted before the law was passed) to take the initiative in revising them to absorb some share of the increase in their suppliers' costs, thus raised in the public interest. It is only in such a willing and considerate spirit, throughout the whole of industry, that we can hope to succeed.

Under Title I of this Act, I have appointed Hugh Johnson as Administrator and a special Industrial Recovery Board under the chairmanship of the Secretary of Commerce. This organization is now prepared to receive proposed codes and to conduct prompt hearings looking toward their submission to me for approval. While acceptable proposals of no trade group will be delayed, it is my hope that the 10 major industries which control the bulk of industrial employment can submit their simple basic codes at once and that the country can look forward to the month of July as the beginning of our great national movement back to work.

During the coming 3 weeks Title II relating to public works and construction projects will be temporarily conducted by Col. Donald H. Sawyer as Administrator and a special temporary board consisting of the Secretary of the Interior as chairman, the Secretary of Commerce, the Secretary of Agriculture, the Secretary of War, the Attorney General, the Secretary of Labor, and the Director of the Budget.

During the next 2 weeks the Administrator and this board will make a study of all projects already submitted

or to be submitted and, as previously stated, certain allotments under the new law will be made immediately.

Between these twin efforts—public works and industrial reemployment, it is not too much to expect that a great many men and women can be taken from the ranks of the unemployed before winter comes. It is the most important attempt of this kind in history. As in the great crisis of the World War, it puts a whole people to the simple but vital test: *"Must we go on in many groping, disorganized, separate units to defeat or shall we move as one great team to victory?"*

Bulletin No. 2—June 19, 1933.

BASIC CODES OF FAIR COMPETITION

(1) This bulletin is intended to inform all trade associations, industrial and labor groups how to proceed to secure the benefits of the National Industrial Recovery Act. In his statement upon the signing of the act, the President said with reference to prompt submission of codes of fair competition:

This organization is now prepared to receive proposed codes and to conduct prompt hearings looking toward their submission to me for approval. While acceptable proposals of no trade group will be delayed it is my hope that the 10 major industries which control the bulk of industrial employment can submit their simple basic codes at once and that the country can look forward to the month of July as the beginning of our great national movement back to work.

This bulletin covers the procedure necessary to comply with the President's suggestion.

(2) The National Recovery Administration will receive proposed codes at any time after this date at its office in the Department of Commerce Building, Washington, D. C. Codes may be submitted by mail and will be promptly examined and associations or groups submitting them will be given such suggestions as are appropriate for further action. Consistent with the President's statement, the major industries will so far as practical have the first attention of the Administrator.

As soon as the proposed code is put in proper form, after consultation with those submitting it, due public notice will be given of a date for a hearing on the code, and at such hearing a reasonable opportunity to be heard will be given to all interested parties, including all affected labor groups, and representatives of consumer organizations, the trade associations or groups submitting codes and any essential minority thereof, other concerns not members thereof, and persons engaged in other steps of the economic process whose service and welfare might be affected by the approval of the proposed code. This hearing will be held by a person designated by the Administrator and there will be present, to advise that person, experts in the industry under consideration and the labor pertaining thereto, who will be chosen under the supervision of the Secretaries of Commerce and Labor, respectively. All other persons or concerns whose cooperation is desirable in connection with the proposed code shall be entitled to attend such hearings.

(3) After such a hearing the proposed code may be modified at the suggestion of the Administration or otherwise and as so modified, if it is agreed to by representatives of the association or group presenting it and ratified by such association or group under such conditions as the Administration may prescribe, it will be presented to the President for his approval or disapproval or suggested modification, and when finally approved by the President, it shall have the effect prescribed by the National Industrial Recovery Act.

(4) In order to carry out the President's suggestion as quoted in paragraph (1) and to effect an immediate reduction of unemployment and increase of mass purchasing power, trade associations or groups are invited to submit without delay a basic code covering only such agreements as are consistent with the policy of the act, respecting maximum hours of labor, minimum rates of wages, and such means as each industry may find necessary to protect its constructive and cooperating majority from the wasteful and unfair competition of minorities or recalcitrants. Additions, modifications, and refinements of such basic codes will be considered later upon application by such associations or groups.

(5) The act requires that certain provisions found in subsection (a) of section 7 shall be included in every code and

therefore no application for the approval of any basic code will be received which omits or modifies these mandatory provisions, which are as follows:

Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, maximum machine-load of employees, and other conditions of employment, approved or prescribed by the President.

(6) *It is not the function of the National Recovery Administration to prescribe what shall be in the codes to be submitted by associations or groups. The initiative in all such matters is expected to come from within the industry itself.* Neither it is the purpose of the Administration to compel the organization of either industry or labor. Basic codes containing provisions respecting maximum hours of labor, minimum rates of pay, and other conditions of employment, which are in themselves satisfactory, will be subject to approval, although such conditions may not have been arrived at by collective bargaining.

(7) In preparing basic codes, the following principles should be given consideration:

(*a*) Basic code provisions relating to maximum hours may involve appropriate consideration of the varying conditions and requirements of the several industries and the state of employment therein. An average work week should be designed so far as possible to provide for such a spread of employment as will provide work so far as practical for employees normally attached to the particular industry.

(*b*) Minimum wage scales should be sufficient to furnish

compensation for the hours of work as limited, sufficient *in fact* to provide a decent standard of living in the locality where the workers reside.

(*c*) Conditions of employment should contain necessary safeguards for the health and safety of the workers and for stabilization of their employment.

(*d*) The following principle emphasized in the President's statement should be recognized and adhered to:

I am fully aware that wage increases will eventually raise costs, but I ask that managements give first consideration to the improvement of operating figures by greatly increased sales to be expected from the rising purchasing power of the public. That is good economics and good business. The aim of this whole effort is to restore our rich domestic market by raising its vast consuming capacity. If we now inflate prices as fast and as far as we increase wages, the whole project will be set at naught. *We cannot hope for the full effect of this plan unless, in these first critical months, and, even at the expense of full initial profits, we defer price increases as long as possible.*

In the drafting of codes, attention is especially directed to this suggestion by the President that the Recovery Administration cannot be effective unless the consumer's buying power is protected. There will be full protection for the consumer. The codes should recognize the interest of the public in the matter of prices.

(8) At the hearings described in paragraph (2) every trade association or group proposing a code should be prepared to establish by evidence the requirements of section 3 (a), clause 1, of the Act which provides:

that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative to such trades or industries or subdivisions thereof.

and of section 3 (a), clause 2, of the act which provides:

that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title.

(9) It is the purpose of the act to encourage a voluntary submission of codes of fair competition and the procedure offered by these provisions for basic codes is intended to simplify and expedite this process. But in the event that codes of fair competition are not voluntarily submitted, attention is invited to other pertinent provisions of the act. It is provided in section 3 (d) of the act that the President upon his own motion or if complaint is made, may after public notice and hearing prescribe a code of fair competition for a trade or industry or subdivision thereof. Section 3 (d) reads as follows:

Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

In this same connection, attention should be directed to the requirements of sections 7 (b) and (c), which read as follows:

The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employ-

ment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

Under the foregoing provisions of the act if no code or agreement establishing standards as to maximum hours of labor, minimum rates of pay, and conditions of employment has been approved by the President, the President is authorized under the foregoing section 7 (c) to prescribe a limited code upon the basis of such investigations and after such hearings as he finds advisable.

HUGH S. JOHNSON,
Administrator.

Approved by:
NATIONAL INDUSTRIAL RECOVERY BOARD,
Hon. DANIEL C. ROPER, *Chairman.*
Hon. HOMER S. CUMMINGS,
Hon. HAROLD L. ICKES,
Hon. HENRY A. WALLACE,
Hon. FRANCES PERKINS,
Hon. CHARLES H. MARCH,
Hon. LEWIS W. DOUGLAS,
Hon. JOHN DICKINSON, *Executive Secretary.*

APPENDIX D

Legislative History of the National Recovery Act (H. R. 5755) With Excerpts From the Congressional Debates.

All references hereinafter given are to the pages of Volume 77 of the Congressional Record, 73rd Congress, First Session.

On May 17, 1933, the President sent a message to Congress, reading in part as follows, pages 3603, 3604:

"*To the Congress*:

Before the special session of the Congress adjourns, I recommend two further steps in our national campaign to put people to work.

I

My first request is that the Congress provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and disastrous overproduction.

Employers cannot do this singly or even in organized groups, because such action increases costs and thus permits cut-throat underselling by selfish competitors unwilling to join in such a public-spirited endeavor.

One of the great restrictions upon such cooperative efforts up to this time has been our anti-trust laws. They were properly designed as the means to cure the great evils of monopolistic price fixing. They should certainly be retained as a permanent assurance that the old evils of unfair competition shall never return. But the public interest will be served if, with the authority and under the guidance of Government, private industries are permitted to make agreements and codes insuring fair competition. However, it is necessary, if we thus limit the operation of antitrust laws to their original purpose, to provide a rigorous licens-

ing power in order to meet rare cases of noncooperation and abuse. Such a safeguard is indispensable.

FRANKLIN D. ROOSEVELT."
THE WHITE HOUSE, MAY 17, 1933.

On the same date Mr. Doughton, Chairman of the Committee on Ways and Means of the House, introduced a Bill (H.R. 5664) "To Encourage National Industrial Recovery, to Foster Fair Competition, and to Provide for the Construction of Certain Useful Public Works, and for Other Purposes." This Bill was referred to the Committee on Ways and Means. On May 23, 1933, Mr. Doughton introduced a revised Bill (H.R. 5755) with the same title, which was referred to the Committee on Ways and Means and on the same day reported out by the Committee (Report No. 159) and referred to the Committee of the Whole House on the State of the Union.

On May 25, 1933, the bill was debated in the House. The first statement was made by Mr. Summers, of the Judiciary Committee, who explained that ordinarily the anti-trust features of the Bill would have to pass through his Committee but that they were waiving their rights in this particular instance. He stated, page 4201:

> "Title 1 of this bill proposes what amounts, in the view of the Committee on the Judiciary, to a suspension of the anti-trust law."

In presenting the bill to the House Mr. Doughton stated, page 4202:

> "Mr. Chairman, this bill now under consideration is one of the major pieces of legislation recommended by the Administration. In my opinion it is one of the most, if not the most important piece of legislation that will come before this Congress, or that has come before the Congress.
>
> "We have quite extended hearings on the bill. A number of witnesses, representing practically every

business, industry, and occupation in the entire country, appeared before our Committee. As near as I recall, not a single witness testified in opposition to this measure.

"This bill, as I understand, is favored or supported by industry, by agriculture, and by labor. Those three powerful organizations in this country are all behind this legislation.

* * * * * * * * * *

"This measure is an essential part of the plan looking toward economic and industrial rehabilitation and recovery. It is the keystone in the arch of that structure. It provides means for putting our unemployed to work for a living wage and under wholesome conditions and at the same time guarantees equal opportunity to those supplying the jobs, in that the Government will cooperate with industry in maintaining standards of competition in keeping with equity and justice. It charts a middle course between the ruinous or complete monopoly in vogue prior to the enactment of the Sherman Anti-trust Law and the error of unfair competition that now has a strangle hold upon business. It sets up flexible machinery which the President may use to prevent monopoly on the one hand and ruinous competition on the other. Flexible remedies are always necessary in emergencies, and no one will dispute that conditions are now critical and dangerous. In fact conditions are such that the very existence of government itself is threatened. The central feature of the bill is to maintain fair competition without granting monopoly and to provide fair standards of labor and working conditions. It seeks to apply the principle of the Golden Rule to business and industry and also to provide a stimulant that will promote courage, confidence and hope."

In the course of Mr. Doughton's speech, the following interruptions occurred, page 4206:

Mr. Cox. "Is the gentleman in a position to deny that this is a price fixing scheme? Under the provisions of the bill, cannot these industries that enter into these agreements fix the prices of their commodities?

Mr. Vinson of Kentucky. "As I read this bill under

the Code of Fair Competition, whether it be voluntary or involuntary, the agreements made among the labor industries or among the industrial concerns, deal with the maximum hours of labor, the minimum pay and the working conditions. These factors enter into the completed cost of the article, but, so far as the bill being a price fixing bill, I do not regard it as such.

Mr. Cooper of Tennessee. "It has all to be approved by the President of the United States.

Mr. Celler. "Personally, I believe that the dissatisfaction the anti-trust decisions of the Supreme Court has always been to the effect that there was inability to arrange something akin to price fixing, and unless you have some price fixing, you will have the same objection to this bill that the manufacturers throughout the country are leveling against the interpretation by the Supreme Court of the Sherman Act. You must have price fixing, otherwise you destroy the purpose of the bill.

Mr. Shallenberger. "In reply to the question of the gentleman from New York (Mr. Celler) I recall in the hearings that we had Mr. Harriman, the President of the United States Chamber of Commerce, before us, and I brought up that particular question. It was stated by him and agreed to, I think, and understood by the Committee that whatever price fixing or rules or regulations are brought into this matter are entirely under the direct control of the President of the United States, and we give him authority through this Arministrator to regulate this matter so that it will not affect adversely the interest of the people but will also help industry.

Mr. Cox. "Is not that price fixed temporarily?

Mr. Shallenberger. "To whatever extent it is granted.

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Mr. Celler. "I hope the members of the Committee will be candid about this matter. I think they ought to admit that there is a possibility and a probability that these agreements might fix prices, but they must be approved at first hand by the President of the United States. That is the way I read this bill. There is nothing short of that.

Mr. Vinson of Kentucky. "You may have an increase in the commodity price that a fair price for the product might be secured. If you are going to increase labor costs on a fair competitive basis, you may have some increase in the price in a given product. It may eliminate cut-throat competition. You may be able to put men back to work who cannot work now because of cut-throat competition, but I maintain there is nothing in this bill to say that it is a price fixing bill as such.

Mr. Celler. "If we can cut out the cut-throat competition by fixing the price, let us do it. I am heartily in favor of it."

Mr. Kelly of Pennsylvania, speaking in defense of the bill, stated, pages 4218, 4219, 4220:

"Mr. Chairman, for ten years or more almost every trade and industry has been trying to establish codes of ethics and fair practices which help build business on a better basis. They have met in convention and have earnestly sought to meet the problem of destructive competition in a fair and lawful manner.

"I have been present when some were adopted. I have read more than fifty codes adopted by various trade associations. They are all practically the same and they are all equally impotent. They do not have and they cannot be given, without proper supervision, a weapon powerful enough to do the work required.

"I hold in my hand the code adopted by the fabricators of Ornamental Iron, Bronze, and Wire, approved by the Federal Trade Commission. It provides against the substitution of inferior materials, selling goods below cost with the intent of injuring a competitor, secret rebates, breach of contract with competitors, shipping goods which do not conform to samples, bribing buyers or employees of competitors, discrimination in price between purchasers to create monopoly, obtaining information surreptitiously as to competitors bids, and so forth.

"All these declarations against unfair practices are but a pious waste as far as results are concerned. Cut-

throat competition rages through trades and industries which have adopted these rules.

"What we must have is a real definition of fair competition and an effective plan for securing it in trade and industry.

"This industrial recovery act sets up a new meaning for the term 'Fair Competiton'. These codes must deal with the fundamental elements of competition under the modern industrial system if they are to carry out the purpose of this Act. The four essentials in any code of fair competition are price, production, wages, and hours.

"There must be agreement as to minimum price. Omit that and the door is open to all the cut-throat competition which has almost destroyed industry. The price must be fair in that it includes a just return to the producer. Establishment of a maximum price will not serve since it would permit destructive competition from that level down to zero. Under it practically all todays evils would flourish.

"The code must contain agreement as to production. We are undertaking to establish a balance between production and consumption. If there is unrestrained production of goods without regard to their consumption, surplus supplies will pile up, with resultant unemployment and chaos. Each industry can work out its apportionment of production to the various units. Without doubt the past performance of each unit will be the yardstick for determining its quota of the production needed to meet the demand. As consumption increases, the production will rise in proportion.

"The code must contain agreements as to wages and hours. These are mandatory under the law and will be vital to the maintenance of fair competition.

"If this measure is enacted, there will be established a new and better definition of fair competition. It will include all the trade practices which have been worked out in the past. It will also include within its scope fair prices, fair production, fair wages and fair hours. If that kind of competition can be secured and safe-guarded, the economic problem is solved."

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"Mr. Chairman, the entire purpose of these provisions is to secure constructive and fair competition and to outlaw unrestrained, destructive and anti-social competition. It is quite true that it is a departure from the philosophy embodied in the anti-trust laws as interpreted for forty years. But 'new conditions teach new duties; time makes ancient good uncouth.' We are in a new age which the men of 1890 could not possibly have foreseen.

"Today the requirement that business shall be war is suicidal. We have drifted on the old pathway while everything changed and the pathway slipped into a swamp. Instead of dealing with business through the Department of Justice this measure permits governmental cooperation through an agency which will help business serve its real purpose of satisfying human needs under fair conditions."

* * * * * * * * *

"Mr. Chairman, this measure provides that for the life of the act and for sixty days thereafter any code agreement or license issued under it shall be exempt from the provisions of the anti-trust laws of the United States.

"This provision must be understood in connection with the previous requirement that no code shall be designed to promote monopolies or to eliminate or oppress small enterprises or discriminate against them.

"The anti-trust laws have had two entirely separated effects. The first is the vitally important one of prohibiting monopoly and all coercive or oppressive tactics toward competitors, which tend to destroy competition and create monopoly.

"This part of the anti-trust laws remains in full force and effect. The operation of this law will be in full accord with it. In fact, it will add to the strength of the laws against monopoly. It was cut-throat competition on the part of the great corporations which lead to the passage of the Sherman Act. The debates in Congress show that it was the complaints of the smaller business men against destruction through unfair practices and destructive competition that lead to the enactment of the law.

"However, the law has been held to prohibit agreements of beneficial kind between independent competitors. It has banned cooperation even when united action has been in the public interest.

"The result has been compulsory competition of the kind which leads to the ruin of the smaller enterprise. The only remedy for excessive production is controlled production. But limitation of production cannot be accomplished by one concern any more than limitation of armament can be accomplished by one nation. There must be agreement and cooperation."

. . . . . .

"This bill cuts a clear pathway through the undergrowth of forty years of legislation and judicial interpretation. It accepts the fact that competitors are practically on the same level of costs in this advanced era of manufacture, and that there is no middle ground between destructive industrial war on one hand and industrial peace through mutual agreements under the supervision of the Government.

"These agreements, properly supervised, cannot lead to oppressive prices. Industry knows that the lowest prices consistent with a fair return induce greater consumption, and greater consumption in turn makes lower costs possible. We have also learned during the last four years that unless the industry and its payroll are preserved there is injury done the entire public.

"Mr. Chairman, the real purpose of the anti-trust laws was to protect the public from unregulated monopoly power. Great consolidations of capital threatened the public welfare. Yet in our own times have come stupendous mergers which are seeking and securing the power which the law sought to guard against. This bill will remove the incentive to merger and consolidation. It will give the little independent enterprise its fair place in the industry and protect it against oppressive methods.

"'Under this plan of partnership controlled by industry and government, there will be preserved every wholesome pohibition of the anti-trust laws against monopoly and oppression. At the same time it will permit agreement for the restraint of the unfair competition which is the sure road to monopoly.

> "As to the attitude of the United States Supreme Court on this problem of planned and controlled industry, it is necessary to look only at the Appalachian Coals decision. That will show how far the Supreme Court will go in any effort to help bring law and order into disorganized industry."

Mr. Samuel B. Hill of Washington, speaking in defense of the bill, said, page 4223:

> "It has been objected that this legislation suspends the operation of the anti-trust law. The prime purpose of the anti-trust law is to preserve fair competition in trade and industry and to preserve that fair competition against oganized monopolies.
>
> "I say to you that the purpose of Title 1 of this bill, which suspends for a certain time the anti-trust law, promotes the spirit of the anti-trust law itself because we propose here to add to or supplement existing law designed to preserve conditions of fair competition. The anti-trust law does not take into consideration unfair competition resulting from the exploitation of labor. It has developed that that is the greatest factor in unfair competition that confronts industry today."

and on page 4224:

> "The anti-trust law is not set aside as to monopolies. It is suspended for the purpose of enabling trade associations and industries to enter into trade agreements under the supervision of the Administrator for the protection of labor against starvation wages and for the protection of legitimate industry against sweat shop competition."

Mr. Cox of Georgia, speaking in opposition to the bill stated, page 4327:

> "In this bill Congress delegates powers which it does not possess—the power to regulate and control the internal affairs of the States, the power to control all industries from the point of production to that of distribution, the power to regulate hours of

labor and to fix wages. My colleagues, it is the most gigantic price fixing scheme ever proposed in the history of any free government.

* * * * * * * * *

"The testimony of the witnesses representing industry appearing before the Committee very frankly confessed that they wanted this bill because it would authorize competitors to come together and form price fixing agreements now prohibited by the anti-trust laws."

Mr. Celler, of New York, speaking in favor of the bill, page 4338, compared the powers granted under Title 1 to those granted to the War Industries Board in 1918, which President Wilson established by a letter addressed to Bernard M. Baruch under date of March 4, 1918, quoting the letter.

SENATE DEBATES

Senator Wagner in opening the discussion in favor of the bill stated, page 5153:

"Title 1 of the present bill is intended to return to the objectives of the anti-trust laws. The first step taken by the bill is to make competition constructive rather than ruinous and to permit cooperation whenever a wise policy so dictates. The bill permits any trade or industrial group to draw up a voluntary code of fair competition, and to submit it to the President for approval. Such a code may contain the standards of fair competition, the practices which should be banned as unfair and the methods which, in the judgment of the group, are most likely to revive industry and increase employment. These methods may include exchange of information, cooperative marketing, standardization, simplification, and a wide variety of other features.

"When such a voluntary code is approved by the President it becomes binding upon the entire trade or industry and any action complying with it is exempted from the provisions of the anti-trust laws. But

before the President accepts any code it must be proved that the code will not tend to promote monopoly, and that the group which proposes it is truly representative of the trade or industry and imposes no inequitable restrictions upon membership. Nor will any code be approved which discriminates against small enterprises.

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"This bill gives general recognition to economic realities which the Court (Supreme Court) operating even under the anti-trust laws, has been constrained to admit in specific instances (Appalachian Coals case). When viewed in this light it is clear that the bill is not a measure designed to curtail production or to lessen the volume of trade. It is a measure to expand trade in commerce by removing the barriers which have caused factories to close and men to walk the streets in idleness."

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Page 5156:

"I do not mean to imply that the pending legislation contemplates price fixing. I refer to these cases (Rent cases and Minimum Wage Laws) simply because price fixing is the most far reaching form of economic regulation; and if the Court will sustain price fixing when the economic situation warrants, there is no reason to believe that the Court will find anything unconsitiutional in this bill."

At page 5162:

Senator Reed. "Under an early section of the bill in Title 1 it is evident that price fixing is intended by agreement among the producers of commodities, and it is made a crime to undersell that fixed price. Does the Senator think it will be possible at the expiration of two years to revert to a system whereby it is a crime to adhere to that fixed or pooled price?

Senator Borah: "I do not think it is possible."

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At pages 5162, 5163:

Senator Borah. "It is perfectly evident, then, that the provisions of the code are going to be combinations or contracts in restraint of trade, or it would not be necessary to suspend the anti-trust laws. They could not possibly be in conflict with the code unless the code runs contrary to this provision which says a contract or combination in restraint of trade is illegal. What is the necessity of suspending this law which condemns trusts unless your new code is to be a trust? What is the necessity of suspending a law which denounces combines in restraint of trade unless your new codes may become a combine in restraint of trade? What is the necessity of suspending a law unless you are preparing to violate it?

Senator Wagner. "May I say to the Senator that while the objective of the anti-trust laws, the perpetuation of genuine competition, was worthy, the law failed to reach that objective and at the same time sanctioned the largest combination of business that we have ever had in the history of the country. Yet the same law prevented smaller business men from cooperating in order to put competition upon a basis of efficiency, and has resulted instead in a destructive, cutthroat competition. We frankly propose to suspend the evil features of the anti-trust laws without diminishing their capacity to serve a useful end."

At page 5237:

Senator Reed. "To come back to the argument, a moment's reflection on the power attempted to be given to the President here, must shock any reflective person. Remember, please, that under a lot of beautiful phrases are couched the most tremendous powers. We speak of codes of fair competition. It is only by indirection, and by admission of the sponsors of the bill, that we realize that that means not merely planting roses around the factory so that the conditions of employment will be pleasant, but it means fixing prices, it means apportioning output, it means creating by the sanction of law, the same kinds of pools and price fixing conspiracies, within an indus-

try that we have been fighting for so long, for so many decades."

In answer to some of the objections of Senator Reed, Senator Wagner stated, page 5238:

"A suggestion was made that the price at which a particular commodity may be sold in the market would be fixed. The Senator was present during our discussion in the Committee. No such thing is contemplated as the fixation of prices. All that will be provided is that there shall not be any sale at a price below the cost of production, and that may differ in different industries in different sections of the country.

"That, everyone admits, is an unhealthy situation, where industries are permitted to indulge in rebates, discriminations, and selling below cost of production in order to destroy some little business man in the community and, when he is wiped out, to restore the old price. It is that type of practice we are seeking to eliminate."

At page 5238:

Senator Black. "Mr. President, I am very much interested in the Senator's statement, that, in his judgment, this bill provides for price fixing."

Senator Reed. "Clearly it does."

At page 5243:

Senator Clark. "As a matter of fact, the effect of Section 5 of this bill is to reverse of what has been the policy of the United States for almost fifty years. Since the passage of the Sherman Anti-Trust Act it has been a crime in this country to indulge in price fixing. Under the terms of this bill it becomes a crime not to indulge in price fixing, punishable by penalties set out in the bill."

Senator Long. "Exactly."

Senator Borah. "Mr. President, you cannot fix the price of labor unless you fix the price of the commodity which you are selling. That is a certainty;

and what is being done here is to make it a crime for anyone not to join in the combine for the purpose of fixing prices."

At page 5244:

Senator Wagner. "Mr. President, how can we provide against monopoly in any other way except as we have provided here? We say that the President must find that the code is not designed to promote monopolies. We may put it that the code shall provide against the creation of a monopoly. That is the same thing.

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"I dislike to interrupt the Senator, but there are some things I want to clear up.

"I have reiterated on the floor two or three times, and it was stated any number of times in the Committee that it is not contemplated that prices shall be fixed, because the fixation of prices is not in conformity with the preservation of fair competition. I made that as clear as I could and still there is constant reiteration. I do not think we ought to set up a straw man here and then knock him down.

Senator Borah. "I think the reiteration arises out of the fact that it is difficult for some of us to see how we are to control the question of wages without controlling the question of prices.

Senator Wagner. "We can provide that the sales shall not be at prices below the cost of production, but as to what that cost of production is depends on the efficiency of each particular plant and we cannot have one fixed price.

Senator Hastings. "Mr. President, I want to ask the Senator from New York a question.

"I want to find out whether there is anything in the bill which would prevent the fixing of prices.

Senator Wagner. "Yes; because we are providing a code of fair competition and providing for practices of fair competition and against practices which bring about unfair competition. That is also well known in the law. The Senator from Idaho yesterday was anxious to have that specifically defined. We do

not define it in the anti-trust laws. We do not define it in the Federal Trade Commission Act. We simply use the words 'unfair competition.' We do not define it in the Tariff Commission Act.

At page 5246:

Senator Borah. "Returning to the matter which we were discussing a few minutes ago, in which I am vitally interested, I asked the Senator from New York if he would be willing to insert after the word 'title' and the colon, on page 4, line 15, the following:

'Provided, that such code or codes shall not permit combinations in restrain of trade, price fixing, or other monopolistic practices.'"

Senator Wagner. "Mr. President, the Senator from Idaho by that proposal does not mean that a code could not provide in general terms for uniform price or provide that there should not be any cut-throat competition and selling below the cost of production? That of course he does not intend to interfere with?"

Senator Borah. "No; I do not.

The amendment above suggested by Senator Borah was adopted by the Senate on page 5247. When the bill was passed by the Senate and went to conference, the conferees changed the form of this amendment to Section 3(a) of the act to read as follows:

"Provided that such code or codes shall not permit monopolies or monopolistic practices" (Conference Report, House Report No. 243, 73rd Congress, 1st Session, page 2).

thus eliminating all reference to price fixing and combinations in restrain of trade.

Proceedings in the Senate After the Submission of the Conference Report.

At page 5766:

Senator Long. * * * "The conferees have eliminated that part of the Borah amendment which would prevent price fixing."

Senator Wagner. "Mr. President, I do not think that is quite accurate. We sought to prohibit price fixing when it would result in monopolies or monopolistic practices, which is the only kind of price fixing to which any objection has been raised on this floor. The words are very plain.

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"The amendment is that no code shall permit monopoly or monopolistic practices, so that if price fixing results in a monopoly or monopolistic practice it is prohibited by the provisions of the measure.

At pages 5834, 5835:

Senator Borah. "The effect of that provision (exemption from the anti-trust laws) is to eliminate all restraint which the anti-trust laws would otherwise impose on the making of the codes which are provided for in previous sections of the bill. In other words, if those who are making the codes see fit to provide anything that heretofore would have come in conflict with the anti-trust laws, that inhibition is now removed, because any provision which may be incorporated in such codes may not come in conflict with the anti-trust laws in view of the fact that the anti-trust laws are suspended as to any provision of the codes.

"Mr. President, on page 4 as the bill passed the Senate there was placed in it this amendment offered by myself and accepted by those in charge of the bill: 'Provided, that such code or codes shall not permit combinations in restraint of trade, price fixing, or other monopolistic practices.'

"That amendment was changed in conference to read as follows: 'That such code or codes shall not permit monopolies or monopolistic practices'."

"It is difficult for me to understand what was in the minds of the conferees. It must be that the conferees and those sponsoring the bill are of the opinion that price fixing is not a monopolistic practice; it must be their view that combinations in restraint of trade are not monopolistic practices. I can perceive no clarity in the amendment as the conferees have changed it and as it is now found in the bill, except upon the theory that those sponsoring the measure are of opinion that neither price fixing nor combinations in restraint of trade are monopolistic practices. In other words, it is the view, I take it, of those in charge of the bill that under the bill there may be formulated programs of price fixing and that there may be combinations in restraint of trade; and, as I take it, according to the bill as now drafted and construed by those who are its sponsors, any code framed by associations under this bill which may provide for a combination in restraint of trade would not be considered to infringe the rule against monopolistic practices—or any combination which would have the effect of fixing prices would not be a monopolistic practice. I can work out no other construction of the amendment as provided by the conferees.

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"It is thoroughly understood by the business men generally that this is the effect of the amendment.

Senator Wagner in answer to this and other statements of Senator Borah said, at page 5836:

"In order that we may not have any misunderstanding about the bill, let me say this, and I only reiterate it because of the constant misstatement as to what the bill does: The bill makes a declaration of law, not merely a provision of the proposed codes, that there cannot be any monopoly or monopolistic practice. That is as clear and definite as any declaration of policy can be made. Any one can go into Court if the code violates any particular provision of the law and restrain its enforcement on the ground that it is monopolistic.

Senator Borah. "But the Senator has declared in the conference report that combinations in restraint of trade are not monopolistic practices.

Senator Wagner. "Because the Senator knows that there is as much difference, as the Courts have construed the word 'combinations in restraint of trade and monopolies' as there is between night and day. 'Restraint of trade' really means restraint of competition. One of the things we want to deal with being the subject of competition but we are making an assurance against monopolistic practices greater than has ever been contained in any law heretofore enacted.

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Senator Borah. "The Senator does not answer my question. What does the Senator think if we have a code which permits combinations in restraint of trade and puts individuals out of business by restraining trade? Is not that a monopolistic practice?

. . . . . .

Senator Wagner. "That all depends. We may provide for some competitive method which, under the decisions of the Courts today, may be regarded as in restraint of trade, which would eliminate cut-throat, sweat shop competition, the thing we are after. Under the provision the Senator proposed we could not eliminate or destroy cut-throat competition.

Senator Borah. "The amendment to which the Senator from New York refers provided that these codes should not permit combinations in restraint of trade. That is all.

Senator Clark. "And price fixing."

Senator Wagner. "The term 'price fixing' is used rather carelessly here too. It has been held that when we fix the wages of an individual we are fixing the price of that particular commodity, namely labor. Under the proposal the Senator from Idaho offered we could not, under the terms of the bill, fix a minimum wage scale.

Senator Borah. "Oh, no. The Senator now provides that we may not only fix a minimum scale but we may fix prices, and, as these telegrams say, unless business people are permitted to fix price levels they cannot protect themselves against the wage increases. That

is reasonable. That is perfectly sound. If we fix wage levels, we will fix price levels at the same time."

Senator Wagner in defense of the conference report said, pages 5837, 5838:

"If this legislation passes, it will be the first time that small business will have a voice in the government of industry. It has none today. Under the law as it exists, with the cut-throat competition, the under-selling, and the other vicious practices which are permitted, large business concerns have been able to destroy small business concerns, compelling them either to sell out to the large industry or to join in a merger. This has been the way the anti-trust laws have worked and this is the thing we want to prevent in the future. In formulating the code of fair competition within each industry we want to give an equal voice to the small business men and the large business men. With this in view we provide that no trade or industrial association which proposes a code shall impose any inequitable restrictions upon membership.

"I am in fundamental sympathy with the objections of the Senator from Idaho. I agree with him that what we must provide against above all else are monopolies and monopolistic practices. But I say to the Senator that we have taken every precaution in this legislation. We not only provide that the President, in passing upon a code, must find that the code neither tends to promote monopoly nor discriminates against small business men. In addition we have accepted the proposal of the Senator from Idaho and gone beyond reliance upon a finding by the President. We have incorporated a definite declaration of law to the effect that the codes shall not permit a monopoly or monopolistic practices. The sort of price fixing which the Senator fears, price fixing which is part and parcel of monopolistic practices, is outlawed by the same language which outlaws such practices.

"But we must not accept the Senator from Idaho's prohibition of all restraints of trade. The words 'in restraint of trade' through Court interpretations, have come to embrace a much wider field of action than the word 'monopoly'. To ban everything which the

Courts have called 'restraint of trade' would defeat the very purposes of this act. It would prevent attempts to limit competition to levels of efficiency and fairness. It would prostrate concerted efforts to abolish sub-standard wages, excessively long hours, and the other harmful practices that have dragged business down to where it is today.

"The trouble is that the Courts have interpreted 'restraint of trade' to mean 'restraint of competition'. Thus if we tried to restrain some of the vicious types of competition against which this act is directed, we would be hampered by the Courts conceptions of 'restraint of trade'. We might even find it difficult to establish minimum wage laws by agreement, for such agreements do restrain certain kinds of competition.

"Let us examine how the law provides against monopolies. In the first place, the declaration of policy states a purpose 'to promote the fullest possible utilization of the present productive capacity of industries in order to avoid undue restriction of production'. Monopoly, on the other hand, let me point out, seeks to curtail or to withhold supply and is inconsistent with this declaration.

"Section 3 (a) (2) provides, as I have said before, that no code which is designed to promote monopolies can be approved.

"Section 3 (a) (6) provides—and here is another important safeguard—that every code shall be subject to conditions necessary to protect consumers, competitors, employees and others. If we couple this proviso with the declaration against monopoly in Section 3 (a) (2), we get full assurance that the fears of the Senator from Idaho are unwarranted.

The same provisions which prohibit monopoly prevent monopolistic price fixing. The declaration of policy declares in favor of increasing the consumption of industrial and agricultural products by increasing purchasing power. This is inconsistent with monopolistic price fixing, which decreases consumption by raising prices and thus reducing actual purchasing power. But we do not want to prevent every possible thing which might be called price fixing, even when no question of monopoly is involved. We all

agree as to the salutary effects of prohibiting sales below cost of production. Yet such a prohibition is certainly price fixing."

And again at page 5840 Senator Wagner said:

"Mr. President, I want to point out the probable results of putting into this Act a prohibition of 'price fixing'. The term 'price fixing', according to court decisions, has very wide connotations. It includes much more than monopolistic price fixing. It includes any concerted efforts to deal with the price problem in any way, to bring price stabilization, or even to engage in such other sorts of industrial cooperation as might tend to prevent harmful price fluctuations.

"For these reasons, a prohibition of 'restraint of trade and price fixing' as these phrases have been interpreted by the Courts, would stand in the way of the most salutary effects which this bill is designed to accomplish.

"For instance, exchange of information, which serves to make competition rational instead of blind and destructive and which thus expands trade in commerce would be prohibited. It was declared an illegal restraint of trade in *United States* vs. *American Linseed Oil* (1923), (262 U. S. 371).

"Price stability, as distinguished from monopolistic price fixing, is a universally recognized necessity in order to achieve economic welfare, and yet it would be made practically impossible by the Borah amendment. This amendment would prevent even the publication by businesses of their own price schedules and their adherence to these schedules even for a short period of time. Such a practice was declared an illegal restraint of trade in the Linseed case. Yet such practices might be necessary to prevent unfair price cutting and other destructive price manipulations.

"The amendment would prevent treatment of the problem of price cutters who sell below cost."

Senator Black, page 5843, stated:

"The Sherman Anti-Trust law is inconsistent with the present measure. It is plain to anyone who is

familiar with the bill and familiar with the Sherman Anti-Trust Law that both of them cannot be in effect at the same time as the law. They are thoroughly inconsistent. The Sherman Anti-Trust Law is a law to prevent combinations in restraint of trade. This bill, it is admitted, if it is to be effective—and I do not say that with any argument against the idea at this time—will create combinations in restraint of production. That is one of the objects—to destroy what is called 'cut-throat competition.' So the bill plainly will permit combinations in restraint of production.

"The bill also will permit combinations in restraint of low price. No one can deny that. If it gives the power and authority to combine for the purpose of preventing the sale of goods below the cost of production, it necessarily means a combination for the purpose of preventing the sale of goods at low prices."

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Senator Wagner. "While the prevention of cut-throat competition and the exploitation of labor—which is practically the same thing—in a particular industry may reduce or, indeed, perhaps altogether prevent production, industry as a whole will benefit by its prevention and therefore ultimately production will be increased."

Senator Black followed this with a long speech, the gist of which is that by eliminating the safeguards of the anti-trust acts, prices and profits would very materially increase, to the great detriment of the people as a whole.

APPENDIX "E"

Extracts from Hearings Before the Committee on Ways and Means, House of Representatives, Indicating the Competitive Abuses Sought to be Remedied by the National Industrial Recovery Act.

STATEMENT OF HON. LEWIS W. DOUGLAS, THE DIRECTOR OF THE BUDGET:

"I am quite sure that this committee is aware of the fact that in certain industries there is what is known as 'cutthroat competition, cutthroat selling.' I am certain the members of the committee are aware of the fact that in certain industries where there are a few employers and manufacturers not imbued with public spirit, wages have been cut to a sweatshop level.

For the purpose of rectifying those conditions, both through the action of industry and of the Government, this bill, H. R. 5664, was introduced. It is divided into three titles." (page 9)

STATEMENT OF DONALD R. RICHBERG, OF CHICAGO, ILL.:

"Now, the result of that upon the managers of industry has been equally or more distressing, because those who desired to maintain fair conditions of wages and working conditions found themselves absolutely unable to compete with business enterprises that constantly cut wages and operated under very unfair and unhappy working conditions. So again, there is no doubt a common purpose and desire among both the managers in industry and the workers in industry to try to establish, in some way, decent standards of wages and working conditions, and I believe it has come to be realized by both groups in the period of this depression that the most unfair competition that existed in industry was the competition through depressed and disorganized and deflated labor.

In other words, the manufacturer who desired to put out a decent product at a decent price, and at the same time pay decent wages, found that he was simply up against a competition that he could not meet, and, willy nilly, he had to

cut wages and he had to work long hours, and he simply had to oppress his employees, although he might have desired to do the square thing and the right thing. (p. 67)

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"That throughout industry there has been complete uncertainty as to what could be legitimately done by a trade association, and there has been very great certainty that some of the things that the *organizations particularly wanted to do, in the line of price stabilization at least, were illegal.*

Therefore, facing this present condition, where the competition which normally existed, perhaps through unfair trade practices, has been intensified by a competition for cheap labor, a competition in long hours, a competition destructive of the physical welfare and well being and the prosperity of the country—in that situation these trade associations perhaps have enlarged their vision, enlarged their desire to get together in agreements, and it has been perfectly apparent that no adequate agreements could be obtained which would not conflict with the antitrust laws. (p. 68)

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"Now, the detail of the bill is merely an effort to write those principles into law; and, of course, I have felt, as I said, that the primary unfair competition from which we were suffering here was the unfair competition in the use of labor. I have been peculiarly interested in those clauses of the bill designed to protect labor, to insure the setting of fair standards of work; and I think you can readily see that there is no honest reason for complaint when an industry is given the opportunity to come under standards which are fixed throughout the industry, and therefore does not face the unfair competition of groups that can break down those standards. In other words, there is every encouragement for an industry to do the right thing under those circumstances. (p. 70)

"Mr. Knutson. In a general way, it encourages manufacturers to do the same thing that the cartels are doing in Europe?

Mr. Richberg. I think, in a general way, that may be true; yes.

Mr. Knutson. And they could not be prosecuted for getting together and fixing prices?

Mr. Richberg. Assuming that the prices themselves bore a reasonable relationship to the costs, and so forth; yes.

Mr. Knutson. Of course, they would be subject to regulations by the Government; but it would not be necessary, would it, for the steel industry, under this legislation, to get specific permission from the Government to fix prices of steel products, and to limit production?

Mr. Richberg. I would say that depended entirely upon the regulations that were enforced by the administration, which would be suited to the needs of a particular industry. For example, there might be in a certan industry, obviously, such an intensive competition that there would be really no reason for putting any particular limitations on the code of that industry along that line; but you might have an industry—and I am not particularly pointing my finger at the steel industry—you might have an industry with such conditions already existing, or that could be developed, that the Government would not want to give them a free hand in fixing prices and limiting output. It seems to me that the virtue of the bill is its flexibility, and also its responsibility; because it goes back to the President and the agencies that he has created, and the responsibility cannot be lost in some board that may or may not have the interests of the community at heart. (p. 72)

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"Mr. Richberg. That is quite correct.

Mr. Hill. Unfair competition, in other words, has grown up, as you have stated, through, you might say, the exploitation of labor or through the manipulation of wages and hours of labor.

Is your conception of this legislation that it proposes to effectuate the primary objective of the antitrust law through the elimination of that kind of unfair competition, and that it is supplementing the antitrust laws in its object to eliminate unfair competition by bringing about an improvement in the conditions of labor, the conditions of which have been one of the factors in unfair competition.

Mr. Richberg. I think that is a very good statement of it, and I am very glad it has been brought out. I think I should have emphasized the fact that you have just

brought out, that one of the primary purposes of the anti-monopoly law or the antitrust laws was to prevent the unfair competitive practices that had grown up, where control of the market would permit a large enterprise to go in and undersell a small enterprise temporarily and destroy that business, and then put their price back again. That is typical of the unfair practices that arose through the development of the monopoly era.

Of course, it can be said, that while, on the surface, and by the letter of the language relieving industries of the antitrust acts, this act, properly administered should really effectuate the purposes of the antitrust act in dissolving unfair competition.

Mr. Hill. At the same time prevent, or at least not encouraging organized monopolies.

Mr. Richberg. Yes.

Mr. Hill. In other words, this legislation simply carries out, if it operates as it is anticipated by its sponsors, to effectuate the very purpose which was in the minds of the legislators at the time they enacted the antitrust law, namely, the prevention of unfair competition.

Mr. Richberg. I believe so. May I add, that I appeared first before a committee of Congress on the subject of antitrust legislation in 1907, and at that hearing I was peculiarly impressed with the testimony of many independent small business operators to the effect that they were not afraid of big business; they were not afraid of huge enterprises, so long as fair competitive conditions could be maintained, because they claimed there was an efficiency in a small enterprise that was lost in a big enterprise, and if they would be set free from unfair competitive practices they could maintain themselves; they were not afraid of mere size.

I believe that is still, to a large extent, true. I think there is an enormous waste and lost motion in huge enterprises which permits a small enterprise, under conditions of fair competition, to maintain itself.

Mr. Hill. This legislation, from your viewpoint, is not breaking down the primary object of the antitrust law?

Mr. Richberg. I would say not.

Mr. Hill. It is rather to supplement, to control, and to effectuate the primary object of the antitrust law?

Mr. Richberg. Yes. And in that connection let me say this. There have grown up, under the antitrust laws, a body of, let us say, judge-made law, which has left a great state of uncertainty throughout industry, and great difficulty of combining for benevolent purposes, because of the restrictions upon malevolent purposes, and this endeavors to make a distinction not between a good and a bad trust but a distinction between good business and bad business. (pp. 78 and 79.)

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It is necessary to restore credit to industry and make it possible to expand industrial enterprises, whereas when they are down at the very bottom, of course, their credit is also at the bottom.

Mr. Ragon. Do you think industry, if given this legislation, would be given an impetus to move forward that would be helpful to the rehabilitation of the country?

Mr. Richberg. Undoubtedly, because the mere fact of increasing your purchasing power, while at the same time being able to exercise control of cutthroat competition, in itself, would stimulate aggressive men to move forward in industrial enterprises, to take a chance. (p. 85.)

STATEMENT OF HON. ROBERT F. WAGNER, A UNITED STATES SENATOR FROM THE STATE OF NEW YORK:

Senator Wagner. "Mr. Chairman and gentlemen, this bill is essentially an employment measure. Its object is to bring about an increase of employment at a level of wages which will afford a standard of living in decency and comfort. (p. 91)

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I believe, too, that in addition it is going to improve and strengthen the ethics within industry itself by doing away with the sweatshop, the kind of competition which has been tearing down industry and where in self-defense frequently they have been required to reduce wages below a standard of decency.

In that way it is going to have not only a great economic effect by increasing purchasing power, but also a great social effect in giving the worker a wage which will permit

him to live in decency, something that he feels and I feel he is entitled to under our economic system.

The first title of the bill is devoted to the stimulation of employment through private cooperative effort. The declaration of policy sets forth the existing national emergency which has produced widespread unemployment and disorganization of industry and is undermining the standards of living of the American people. It also establishes the constitutional bases upon which title I of the bill is erected. Constitutionally, title I is founded upon the interstate commerce clause and the general welfare clause of the Constitution. The declaration of emergency bears upon both of these constitutional grounds. Obviously, the conditions produced by the emergency affect the general welfare. It is equally plain that by reason of the emergency many commercial and industrial practices—and I think this is important, gentlemen—by reason of the emergency, many commercial and industrial practices become a burden upon interstate commerce which in normal times would perhaps not be so regarded." (p. 92)

"The purpose of the present bill is not to abolish competition but to lift its standards and to raise its plane so as to eliminate destructive practices, unfair practices, competition in the reduction of wages, and the lengthening of hours. In other words, efficiency, rather than the ability to sweat labor and undermine living standards, will be the determining factor in business success.

Through the cooperative action made possible and lawful under this bill industry may for the first time effectively do many of the following things: I am not going to read them all, Mr. Chairman and gentlemen, but industry, as you know, has attempted to provide for market research and analysis; cooperative marketing and sales promotion; product research; development of sound intra-industrial relations; budgeting; simplification and standardization.

But, of course, with the law as it is today they have been discouraged in that sort of activity. And for another reason, that they could reach no definite conclusion or agree upon no particular conclusion as to production and hours of labor, without violation of the anti-trust laws. Now they can do these things effectively under the provisions of this bill so as to make a real contribution, in my opinion, to progress.

In addition, they may engage in numerous other cooperative devices, subject to the approval and supervision of the President.

At the present time it is frequently the person with the lowest industrial standards who determines the standard for the entire industry. The purpose of this measure is to make the best judgment and the highest ideals of the industry govern its competitive activities. That is very important and we must accept it as true. It largely accounts, in my opinion—and I am sure that the members of the committee are cognizant of it—for the tremendous support which is being mobilized throughout the country for this legislation. They see in it at least a hope *that this cutthroat competition* which has been dragging us down, reducing our standards of living may be for all time eliminated, and we may go along on a higher standard of living. That will be a great contribution toward the happiness of the American people.

As I have said, the purpose of this measure is to make the best judgment and the highest ideals in the industry govern its competitive activities, replacing the now low standard of sweatshop, cutthroat competition. (p. 96)

STATEMENT OF WILLIAM GREEN, PRESIDENT AMERICAN FEDERATION OF LABOR:

In operation, industry will be permitted to function in a cooperative way, freed from the effects of evil practices destructive of both industrial ownership and labor, and labor will be accorded enlarged and increasing opportunities for employment along with the exercise of a constantly increasing purchasing power. p. 118)

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The right to organize into bona fide labor organizations, to bargain collectively, to be represented by representatives of their own choosing, is as essential to the well-being of labor as the exercise of the right of capitalists to form corporations and to engage in organized industrial activities is to capital. A summation of the outstanding provisions of the bill clearly shows that industry may organize and through such organization develop cooperation, eliminate unfair competitive practices, prepare a code of fair competition which sets forth standards covering particular

trades and competitive practices within industry. The antitrust laws applicable to industry are suspended so that industry may unite and cooperate for the achievement of the purposes set forth in the act. (p. 119)

STATEMENT OF HENRY I. HARRIMAN, PRESIDENT, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA:

"Now, whatever the exact figures may be, it is perfectly evident that we cannot have a return to prosperity until the price level of general commodities has moved substantially upward and until many millions of these men who are now unemployed are put back to work. And the object of this bill which is before you is to accomplish those two results.

Whenever there is a great surplus of labor, whenever we are passing through a period of great depression, we always have cutthroat competition. It is inevitable. One man takes an order at a slightly less price than his competitor. In order to have a chance to break even on that low price he must not only use all the skill that he has but he must cut the pay of his working people. Then the other man, not to be outdone, cuts his price still further; and so the endless chain continues, of lower prices and lower wages, and lower wages and lower prices.

I believe the time has come when we must take out of competition the brutality of competition. We must take out of competition the right to cut wages to a point which will not give an American standard of living, and we must recognize that capital is entitled to a fair and reasonable return, and that therefore goods must be sold at a price which will enable the manufacturer to pay a fair price on his investment.

The antitrust laws were rightly enacted to prevent monopoly; but they have gone far beyond that. They have prevented agreements between parties which would make it possible to stop this cutthroat and deflationary process.

Now, I am not for one moment in favor of abolishing our antitrust laws. I believe that they should be retained on our statute books as a guarantee against the return of unregulated monopoly. On the other hand, I think the time has come when we should ease up on these laws and, under

proper governmental supervision, allow manufacturers and people in trade to agree among themselves on these basic conditions of a fair price for the commodity, a fair wage, and a fair dividend.

That, gentlemen, is the object of this bill. It does not propose any repeal of our antitrust laws. It simply provides that when groups of men in trade associations or otherwise have come together and entered into an agreement, and the Government has found that agreement to be in the public interest, that in such a case the antitrust laws should not prevent such contracts from going into effect. (p. 134)

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"Mr. Lewis. Mr. Harriman, I am going to ask you questions with regard to two phases of the bill. First, tell us what is understood by a trade association, giving an actual example, if you can.

Mr. Harriman. A trade association is a group of manufacturers or men employed in a given or common trade who unite for common benefits.

Mr. Lewis. Can you give us an example?

Mr. Harriman. Yes; the electrical-supply trade.

Mr. Lewis. How many such trade associations are operating in the United States today? An approximate estimate will be sufficient.

Mr. Harriman. I do not know, but I know there are a little over 400 who are members of the chambers of commerce.

Mr. Lewis. That is, trade associations?

Mr. Harriman. Yes.

Mr. Lewis. From your knowledge of those trade associations, as president of the chamber of commerce, how many of the three or four hundred would you say would respond voluntarily to the plan of this bill, to help carry out its purpose?

Mr. Harriman. I should think a great number of them would, and the big ones will rush to it. Those who are large employers, seeing great benefit to the country through increased buying power of the country, will rush to it. I would not be at liberty to name names, but I know of 8 or 10 trades that are now preparing their codes, whose employees run into the millions.

Mr. Lewis. That is the next subject I wish to discuss. A code of ethics or fair practices, as contemplated in this plan—have any such codes been worked out within a trade association that could be presented to the committee for its information?

Mr. Harriman. No. Probably none that would interest you, for the reason that the Federal Trade Practice Act that we now have on the statute books has been interpreted both by the courts and by the Federal Trade Commission in very narrow terms and has not been interpreted as covering broad basic elements such as minimum wages, maximum hours, and reserves for sickness, accident, and old age.

The present act is narrow in its scope. It has been confined very largely to questions of fair advertising, fair labor relief, minor matters, so far as the economics of the Nation are concerned.

I assume that if this bill is passed the trade codes will be divided into two parts. The first part will deal with labor conditions which are not covered today by any present act, and wages and hours and reserves.

The second part of the code will deal with these other matters, such as false advertising and similar items of not as great importance.

We conceive that what the Government is interested in and what trades are interested in is the basic question and not the minor questions, and that the first codes that will be submitted will cover nothing, or practically nothing, but the matter of wages and hours, and so forth, and those can go into effect very promptly. Then the refinements of the act can be developed later; that is the refinements of the codes can be developed later.

Mr. Lewis. There are some 1,500 trade cartels in Germany that resemble what is being undertaken under this bill. Do you know to what extent the German trades have worked out codes of ethics or fair practices?

Mr. Harriman. No; I do not." (pp. 152-153)

EXTRACTS FROM HEARINGS BEFORE THE COMMITTEE ON FINANCE, U. S. SENATE, INDICATING THE COMPETITIVE ABUSES SOUGHT TO BE REMEDIED BY THE NATIONAL INDUSTRIAL RECOVERY ACT.

STATEMENT OF THE HONORABLE ROBERT F. WAGNER, UNITED STATES SENATOR FROM NEW YORK.

"The national industrial recovery bill has as its single objective the wide-spread and permanent reemployment of workers at wages sufficient to secure comfort and decent living. This desired end is to be reached by a twofold program, involving, first, cooperative action within industry, encouraged by law and supervised by the President for the protection of the public, and secondly, direct Government expenditures for public works.

"The bill marks a far-reaching departure from the philosophy that the Government should remain a silent spectator while the people of the United States, without plan and without organization, vainly attempt to achieve their social and economic ideals. It recognizes that planlessness and disjunctive efforts lead to waste, destruction, exploitation, and disaster and that purposive planning awaits the substitution of regulated cooperation in place of the unlimited and frequently pernicious competition which we have heretofore regarded as the sole guardian of the public welfare. This trend in thought and action is accompanied by a widening concept of business—that all business is affected with a public interest. That is the necessary consequence of the growing complexity of our economic machinery and of the increasing interdependence between one State and all States, between one industry and all industries, between employment anywhere and employment everywhere. At the same time, the bill preserves as the central motivating theme of American industry and voluntary action and individual initiative which have contributed so markedly to our industrial progress. Competition is not abolished; it is only made rational. In this bill we say that business may not compete by reducing wages below the American standard of living, by sweating labor, or by resorting to unfair prac-

tices. Competition is limited to legitimate and honorable bids for the market and real gains in technical efficiency.

"The first title of the bill, which is devoted to promoting coordination within industry, illustrates the new blend of public and private action which is necessary today. In order that government may play its proper role, the bill centralizes authority in the President, with power on his part to set up the agencies and appoint the officers and employees necessary to carry out the new policy. He is authorized also to establish an industrial and planning research agency, to enlist the aid of the Federal Trade Commission for necessary investigation to modify or cancel any action taken under the bill, and to terminate the bill prior to its stated 2-year life by a declaration whenever the national economic emergency will have ended.

"Despite this centralized power, the emphasis is upon voluntary action. To make competition sane rather than blind and destructive, the bill allows any trade or industrial association or group to prepare and submit to the President for approval a voluntary code of fair competition. Such a code of fair competition will set forth the best judgment of those engaged in the particular trade or industry as to the competitive conditions within the industry, specifically (1) the standards of fair competition; (2) the trade practices which should be banned as unfair, oppressive and designed to give advantage to the employer with the lowest standards; (3) the methods which should be employed to rehabilitate the industry, increase its capacity to give employment, and raise the living standards of those who labor in it. These methods may include devices such as exchange of information, cooperative marketing, simplification of style, standardization of products, and many other features.

"When such a voluntary code is approved by the President, it becomes effective and binding upon the entire trade or industry and any action complying with it is exempted from the provisions of the antitrust laws. In this manner we lift the plane of competition to the level of the highest ideals prevailing in the particular industry, and at the same time we avoid the regimentation of all industry under a single inflexible set of rules. (pages 1 and 2)

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Senator Wagner: "Not at all. It simply plans a nationally planned economy, without which I predict we never can recover, because it is unfair competition, among other things, that struck us down. We are not seeking a change; we are seeking a rationalization of competition, instead of permitting the sweat-shop, by exploitation of labor, to break us down by its competition. Instead of that, we want to substitute competition in efficiency and on a high plane, where the laborer gets a just reward for his services." (page 6)

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"The bill is drawn to expire at the end of 2 years. It is frankly an experiment. But it is an experiment worth making, for our objectives are to preserve the merits of competition and to avoid its abuses, to multiply the opportunities for employment and to lift our standards of living. The bill establishes that exploitation shall no longer be an advantage in the race for success and that the highest ideals of those engaged in industry shall determine its standards of action." (page 7).

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STATEMENT OF JAMES A. EMERY, REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS.

"First. These measures aim to create conditions that will put back to work and retain therein at better prices of pay the largest possible number of our people. To this end the measure purports to grant a new measure of self-organization for cooperation in industry that will set up codes of fair competitive practice, controlling the deadly downward spiral of prices and wages resulting in cut-throat competition for survival, which has completely demoralized the normal exchange of goods and services among our population." (page 274)

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"What may be included in codes of fair competition or permissible agreements is not defined in the bill but rests in the discretion of the administrator, upon the meaning

which may be given to the term 'fair competition' in the light of the objectives of the measure." (page 283)

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Mr. Emery. "I wish that were stated in the bill.

Senator Wagner. "You cannot put every word into the bill. Everybody knows it except those who are now attempting to conjure these imaginary arguments in order to defeat it.

Mr. Emery. "We are not conjuring up any imaginary arguments.

Senator Wagner: "We have had conferences, Mr. Emery, with you, and I think it was pretty definitely stated what the purposes were behind the bill, and that the thing was to lift up and to prevent this unfair competition and this exploitation of labor, and that will put competition on a fair, decent basis, for the smaller as well as the large, and my own view is that this is going to help the small business man as against the large business man. It is going to give the small business man a chance, because the hours of labor and wages have got to be practically the same in the same community.

Senator Reed. "If I may resume again, I would like to complete my thought. We have been sitting here for several days listening to representatives of the oil industry urge this sort of thing for their industry, appointment of a dictator to have the power to fix prices and regulate competition, and they are frank enough to tell us that their motive is to raise the price of oil from its present low level to manufacturers of Pennsylvania and elsewhere who favor this bill about a dollar a barrel. I have been approached by a good many because in their minds it is an indirect way of repealing the present antitrust laws, and I want to know how that strikes you.

Mr. Emery. "I want to be perfectly frank about it, as to what we assumed was going to be the effect of this measure. We assumed that one of the causes of the present depression was the deadly downward spiral of prices and wages, which has completely demoralized the normal exchange of goods and services among our population. In other words, as men on the ladder, they fought with all the means they had, they cut prices along until conditions became such that they were unable to pay labor, and the result

was a deadly downward fall in price levels. The effect is that you can do two things. You can compel competition to the death, on the one hand, and have regulation of competition under appropriate conditions. We believe men can be forced to form organizations in industry; that you can cause an effective measure of competition that will prevent the most destructive element that hits our consuming power and that is low wages."

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Mr. Emery. "I am sure you will agree with me that one of the most disastrous features of this depression has been that steady deadly competition that demoralized business, and every industry was overburdened with debt, and could not get the money to sustain them until we were all brought down on that level. So far as the people I represent are concerned—and we say it with as much interest in those to be protected as others—that the manufacturer who sells below cost is as much a liability or more so than an asset.

Senator Reed. "And if you establish a system of this kind, or like that in Germany, your cure is worse than your disease.

Mr. Emery. "The cure here is that you are after a reasonable amount of regulated competition between parties, but they must depend upon the administration of the bill. One thing certain about the bill is that the administrator must, if it is retained in the form it is now in, regulate working conditions and employment conditions and wages as now prescribed in the bill. Those are things he must do, and whether he does anything else depends on him." (pages 287, 288.)

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